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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

15 Cr. 0607(WHP)

5 JAMES CAPERS, et al.,

6 Defendants.

7 -----x  
8 September 17, 2015  
9 11:50 a.m.

10 Before:

11 HON. WILLIAM H. PAULEY III,

12 District Judge

13 APPEARANCES

14 PREET BHARARA

15 United States Attorney for the  
16 Southern District of New York

17 BY: SCOTT A. HARTMAN

JESSICA R. LONERGAN

JASON M. SWERGOLD

Assistant United States Attorneys

18 ANDREW G. PATEL

19 Attorney for Defendant James Capers

20 NATALI J.H. TODD

Attorney for Defendant Tommy Brown

21 JOHN ANTHONY DIAZ

22 Attorney for Defendant Jessie Irvin

23 SARAH KUNSTLER

Attorney for Defendant Marquise Rochester

24 JEFFREY G. PITTELL

25 Attorney for Defendant Edwin Moyer

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APPEARANCES CONTINUED

XAVIER ROBERT DONALDSON

Attorney for Defendant Unique Christopher

DAVID TOUGER

Incoming Attorney for Defendant Unique Christopher

THOMAS FRANCIS DUNN

Attorney for Defendant Dante Rodgers

- also present -

Kelley Sharkey

Attorney to be appointed for Defendant Christian McKnight

oOo

THE COURT: Good morning. Please be seated.

Please bring in the defendants.

THE CLERK: Matter on for initial conference before  
the Court, United States of America against James Capers, et  
al.

Will counsel for the government please state their  
appearances for the record.

MR. HARTMAN: Good morning, your Honor. Scott Hartman  
with Jessica Lonergan and Jason Swergold for the government.

THE COURT: All right. Good morning.

MS. LONERGAN: Good morning, your Honor.

THE CLERK: And for the defendants, starting with  
Mr. Capers.

MR. PATEL: Good morning, your Honor. Andrew Patel  
for Mr. Capers. Mr. Capers is seated in the jury box.

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1 THE COURT: Where is he seated?

2 MR. PATEL: Mr. Capers, would you raise your hand?

3 THE COURT: All right. I note the presence of  
4 Mr. Capers in the jury box.

5 Good morning, Mr. Capers and Mr. Patel.

6 THE CLERK: Counsel for Mr. Brown.

7 MS. TODD: Good morning, your Honor. Natali Todd for  
8 Mr. Brown, who is seated in the second row to the Court's  
9 right.

10 THE COURT: All right. Good morning, Ms. Todd. I  
11 note Mr. Brown's presence.

12 Ms. Todd, we were waiting for you. In the future, be  
13 here.

14 MS. TODD: Your Honor, if I may? I was literally  
15 stuck between two stations on the train. I was unable to make  
16 any kind of contact.

17 THE COURT: Leave earlier.

18 THE CLERK: Counsel for Mr. Irvin.

19 MR. DIAZ: Good morning, your Honor. John Diaz,  
20 retained for Mr. Jesse Irvin, who is seated in the jury box in  
21 the second row in the third seat to the Court's right.

22 THE COURT: Good morning, counsel. And I note the  
23 presence of Mr. Irvin in the jury box.

24 THE CLERK: Counsel for Mr. Rochester.

25 MS. KUNSTLER: Good morning, your Honor. Sarah

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1 Kunstler for Mr. Marquise Rochester. He is seated in the  
2 second row in the second seat from the -- well, it is easier  
3 from the other side, rather. In the third row -- he is  
4 standing up.

5 THE COURT: Fine. I note Mr. Rochester's presence,  
6 and good morning, Ms. Kunstler.

7 THE CLERK: Counsel for Mr. Moyer.

8 MR. PITTELL: Good morning, your Honor. Jeffrey  
9 Pittell appearing for Mr. Moyer. He is seated in the jury box  
10 next to Mr. Capers.

11 THE COURT: Good morning, Mr. Pittell, and I note Mr.  
12 Moyer's presence.

13 THE CLERK: Counsel for Mr. Christopher.

14 MR. DONALDSON: Your Honor, Xavier Donaldson, counsel  
15 assigned to Mr. Christopher.

16 MR. TOUGER: David Touger, here to replace  
17 Mr. Donaldson.

18 THE COURT: All right. Good morning, gentlemen.

19 And where is Mr. Christopher?

20 MR. TOUGER: Mr. Christopher is the second row, the  
21 last seat from the left.

22 THE COURT: All right. Mr. Donaldson, I understand  
23 that you need to withdraw from this matter given your  
24 representation in other matters in the Bronx?

25 MR. DONALDSON: Yes. Related to this case, yes.

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1 THE COURT: All right. Very well.

2 Then, Mr. Touger, you are the CJA attorney on duty  
3 today who I asked to be here, and I understand from the U.S.  
4 Attorney's Office there are no potential conflicts. So,  
5 accordingly, I'm appointing you in Mr. Donaldson's place  
6 instead as counsel for Mr. Christopher.

7 And I trust, Mr. Donaldson, that you will cooperate in  
8 every way with Mr. Touger --

9 MR. DONALDSON: I already have.

10 THE COURT: Very well. Thank you very much for your  
11 service to the court, Mr. Donaldson. You are excused.

12 MR. DONALDSON: Thank you.

13 THE COURT: Mr. Touger, why don't you come up and take  
14 a seat at counsel table.

15 THE CLERK: And counsel for Mr. Rodgers.

16 MR. DUNN: Good morning, your Honor. Thomas Dunn for  
17 Mr. Rodgers, and Mr. Rodgers is seated next to me.

18 THE COURT: All right. Good afternoon -- or good  
19 morning to you, Mr. Dunn. I note Mr. Rodgers' presence.

20 And, finally, just for the record, I note the presence  
21 of Kelley Sharkey in the well of the courtroom. I understand  
22 that the defendant, Mr. McKnight, has not yet been writted in  
23 here and, accordingly, you haven't yet been appointed, but it  
24 is anticipated that you will be appointed when he is arraigned.  
25 So I thank you as a courtesy to the Court for being here this

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1 morning

2 MS. SHARKEY: Thank you, Judge.

3 THE COURT: Now, Mr. Hartman, this is an initial  
4 conference. Briefly, what are the nature of the charges that  
5 the government has lodged against the defendants and what  
6 discovery does the government have to provide to their counsel?

7 MR. HARTMAN: Your Honor, this is primarily a  
8 racketeering case. The defendants are charged with being  
9 members of what the government has termed in the Indictment the  
10 Leland Avenue Crew -- it is named after a street in the Bronx,  
11 Leland Avenue -- where the organization, the enterprise  
12 primarily operated. It was a street gang that these members or  
13 these defendants participated in.

14 In connection with their participation in this street  
15 gang, they engaged in a variety of violent acts -- shootings  
16 and assaults and such -- as well as narcotics trafficking,  
17 specifically crack cocaine trafficking. And they were engaged  
18 in an ongoing dispute with a rival street gang based on Taylor  
19 Avenue, which is another street in the Bronx that was a couple  
20 of streets over. And we've charged -- I just want to note for  
21 the record so the Court is aware, and I think the Court may  
22 already been aware, we charged 11 members of the Taylor Avenue  
23 crew in a companion case that is currently before Judge Failla  
24 with racketeering charges as well.

25 In addition to the racketeering conspiracy, which is

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1 Count One of the Indictment, we've also charged all of the  
2 defendants in a crack cocaine conspiracy, which is Count Three  
3 of the Indictment, and we've charged six of the eight  
4 defendants with using and carrying firearms in connection with  
5 the racketeering conspiracy.

6 We've also charged Mr. Capers with the July 7th, 2015  
7 murder of a rival gang member from Taylor Avenue, and in  
8 connection with that we've charged him in Count Two with a  
9 racketeering murder. We've also charged him with a drug murder  
10 in Count Four and a 924(j) in Count Five.

11 With respect to the discovery, we expect there to be  
12 substantial discovery in this case, Judge. There have been a  
13 number of controlled purchases of crack cocaine from the  
14 defendants in this case. So in connection with that, we expect  
15 there to be audio and video recordings and other documents  
16 relating to those controlled purchases.

17 We've also executed search warrants on the Facebook  
18 pages of a number of these defendants. Those productions tend  
19 to be very large because we tend to get a lot of data from  
20 those. And so that discovery will all be produced. It is our  
21 intention at this time to produce the discovery, those Facebook  
22 pages, to all of the defendants, not on a defendant-specific  
23 basis.

24 We've also searched a number of cell phones that were  
25 seized by the NYPD in connection with the state offense arrests

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1 for some of these defendants, and so we will be producing those  
2 as a result of those searches as well.

3 There are numerous jail calls -- thousands of jail  
4 calls, actually -- involving these defendants that were  
5 recorded primarily at Rikers island when they were detained in  
6 connection with various state offenses that are in some cases  
7 relevant to this case and in some cases not.

8 There are also property vouchers related to seizures  
9 of firearms and controlled substances that were made by the New  
10 York City Police Department in connection with some of these  
11 state offense arrests.

12 There are YouTube videos in which the defendants hold  
13 themselves out as members of the Leland Avenue Crew where they  
14 sometimes refer to them as the Paper Gang or Paper Avenue Gang.

15 There are also reports -- crime scene reports and  
16 photographs related to certain acts of violence that were  
17 investigated by the NYPD, not just the murder on July the  
18 7th but also other shootings and such, which we would prove up  
19 as overt acts in furtherance of the racketeering conspiracy at  
20 the trial in this case. So we will be producing those  
21 materials as well.

22 There are also videos -- surveillance videos in  
23 connection with some of those shootings that were obtained from  
24 businesses in the area that captured relevant facts.

25 So that's the universe of discovery that we expect to



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1 produce in the case. There may be some other things as well.

2 THE COURT: Are there any statements by any of the  
3 defendants in custody?

4 MR. HARTMAN: In some cases there were statements that  
5 were made, so we do intend to produce those on an individual  
6 basis. So apart from what I've just outlined, which is all  
7 group discovery and we intend to produce for the most part to  
8 all of the defendants, we will be producing to each individual  
9 defendant on an individual basis his prior criminal history  
10 record, his rap sheet. We'll also be producing NYPD arrest  
11 reports for certain of the arrests that each defendant has been  
12 the subject of in the past, because we will in some cases be  
13 attempting at trial to prove up the facts underlying those  
14 arrests as conduct in furtherance of the racketeering  
15 enterprise. So we are producing those arrest reports to give  
16 defense counsel notice of some of the facts that we would  
17 intend to prove up.

18 And then we will also -- to the extent that  
19 post-arrest statements were made, we will produce that  
20 information to defense counsel as well. My understanding is  
21 anyone who made a post-arrest statement, it was videotaped, so  
22 we will be producing that video file as well.

23 With respect to the group discovery, Judge, we have  
24 been in communication with Mr. Patel about the best way to get  
25 that out to the defendants. We are going to continue to have

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1 discussions about how to do that. We do anticipate that within  
2 the next 30 to 45 days we can substantially complete discovery  
3 in this case. And we may come back to the Court if it appears  
4 appropriate to appoint a discovery coordinator, but if there is  
5 another more efficient way to get the discovery out, we'll talk  
6 to Mr. Patel about what that would be and go with the route  
7 that will ensure that the defendants have the evidence and the  
8 discovery as soon as possible.

9 THE COURT: Is the government going to produce all of  
10 the discovery in electronic format?

11 MR. HARTMAN: We do intend to, Judge, and given the  
12 quantity of the discovery, we expect it will be on a hard  
13 drive. So it is possible that we would just solicit hard  
14 drives from all of the defendants and produce it that way.  
15 Given that we do produce on a rolling basis because there is a  
16 lot of material, it might be more efficient to have, you know,  
17 one member of the defense team receive all the CDs and then  
18 others will copy them. We will talk to Mr. Patel about the  
19 best way to get the discovery out.

20 THE COURT: What about getting that electronic  
21 discovery to the defendants who are in custody?

22 MR. HARTMAN: My understanding, Judge, is that the  
23 majority of the defendants are in BOP facilities. They are at  
24 the MDC, I think, for the most part. There is one defendant at  
25 the MCC. And we'll talk to the marshals about whether or not

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1 that is going to remain that way.

2 Because of the fact that we've charged this rival  
3 gang, my understanding is that the marshals intended to detain  
4 the defendants in this case at the MDC and the defendants in  
5 the other case at the MCC. So I think that the defendant  
6 detained in the MCC in this case may ultimately be moved to the  
7 MDC, but we'll talk to the marshals about that.

8 My understanding is that the MDC will receive discs  
9 from defense counsel. Each defendant, I think, is allowed to  
10 have up to 200 discs in his cell. But if we put the material  
11 on a hard drive, the government will provide that to the MDC  
12 and the MDC will make it available to all the defendants who  
13 are charged in the case.

14 THE COURT: All right. Thank you, Mr. Hartman.

15 Mr. Patel.

16 MR. PATEL: Your Honor, I just want to raise one  
17 question. Surveillance videos, including -- I can't believe  
18 that I am about to say this, but post-arrest interviews in the  
19 Bronx are all on proprietary software. So unless the  
20 government converts it to something more universal, none of us  
21 are going to be able to see that.

22 THE COURT: What about that, Mr. Hartman?

23 MR. HARTMAN: Judge, if I could address that?

24 Generally what we do is we provide the software that's  
25 required to view the videos. That said, the technology

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1 particularly at the MDC and the MCC tends to be either  
2 antiquated or secure in a way that you can't run these  
3 programs. So what we intend to do is to have our in-house tech  
4 people, to the extent that they can, convert the videos to a  
5 playable format. And when we put it on a hard drive, we will  
6 do it in a format that should be playable. Sometimes it is an  
7 iterative process. We have to hear back from defense counsel  
8 about certain files that there are problems with, and we work  
9 with them to get that done.

10 Judge, the other thing I did want to address is with  
11 respect to Mr. Capers, the capital case process, because I  
12 omitted to discuss that with the Court. This case has not yet  
13 been declared by the Attorney General with respect to the  
14 government's decision about whether or not to seek the death  
15 penalty. We do anticipate that this is a case in which we can  
16 make that decision without the need for mitigation discovery  
17 from the defense. And so what we intend to do is put together  
18 a submission that will be sent to DC within the next couple of  
19 weeks.

20 Generally that decision, it varies a lot, Judge, in  
21 terms of how much time it takes to get the decision back from  
22 them. But I know recently I had a case where the committee  
23 passed on the decision within 60 days.

24 So I think what Mr. Patel is -- based on my  
25 conversations with defense counsel, we expect that they are

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1 going to be asking the Court to come back in about three  
2 months. I think it is likely we will have a decision on the  
3 capital case issue at that time.

4 THE COURT: Does the government believe that they can  
5 complete then the production of all of this material on a  
6 rolling basis within 45 days?

7 MR. HARTMAN: That's our hope, Judge. We do believe  
8 it is possible and we are going to be working diligently to get  
9 that done. If for some reason we encounter a major obstacle in  
10 that regard, we'll certainly talk with defense counsel and if  
11 we need to we'll come back to the Court.

12 THE COURT: All right. It sounds like one of those  
13 obstacles might be dealing with converting this proprietary  
14 software into something that's viewable by defense counsel and  
15 the defendants. And because I generally like to see any  
16 statements by a defendant in custody provided swiftly to all  
17 defense counsel, I'm going to urge the government to start with  
18 that. It will serve two purposes. It will comply with my view  
19 that defense counsel need to know what their clients have said,  
20 and we'll uncover any flaws in the conversion process early on  
21 rather than at the end of the day.

22 Does that make sense to you?

23 MR. HARTMAN: Judge, that makes total sense and we  
24 will prioritize those statements.

25 THE COURT: All right. Thank you.

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1 Mr. Patel.

2 MR. PATEL: Your Honor, thank you. Mr. Hartman and I  
3 have been this road before, and, ironically, the only  
4 proprietary system that we haven't quite figured out yet is the  
5 one used by the Bronx Homicide Unit. I have no idea why they  
6 would pay money for something that they could get for free, but  
7 there we have it. So that's been a little bit of a stumbling  
8 block in the past. Hopefully, we can get through that.

9 But, your Honor, Mr. Hartman correctly anticipated our  
10 request was to come back in approximately three months. That  
11 should give us time to start to get our arms around this. I  
12 must tell you, I would be very surprised if we had an answer  
13 from the Attorney General by then but I would be delighted.

14 THE COURT: All right. Does any other defense counsel  
15 wish to take a view separate from that that's been expressed by  
16 Mr. Patel?

17 (Pause)

18 Then I'm going to require the government to complete  
19 the production of discovery on a rolling basis, let's say, by  
20 October 30th. And then looking down from there, I will put  
21 this matter on for a further conference on December 18th at  
22 2 o'clock with a view at that time that defense counsel may be  
23 in a position to inform the Court as to what motions, if any,  
24 they may wish to make prior to trial. And assuming, perhaps  
25 optimistically, that the Attorney General will have made a

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1 decision in this case, I'll be fixing a trial date on  
2 December 18th.

3 Is that a schedule that is acceptable?

4 MR. HARTMAN: That is fine for the government, Judge.

5 MR. PATEL: Thank you, your Honor. That is fine.

6 THE COURT: What are the defendants' respective views,  
7 then, regarding the exclusion of time between now and  
8 December 18, 2015?

9 MR. PATEL: On behalf of Mr. Capers, your Honor, I  
10 consent to the exclusion of time.

11 MS. TODD: On behalf of Mr. Brown, I consent to the  
12 exclusion of time.

13 MR. DIAZ: On behalf of Jessie Irvin, we consent to  
14 the exclusion of time, your Honor.

15 MS. KUNSTLER: On behalf of Mr. Rochester, we consent.

16 MR. PITTELL: On behalf of Mr. Moye, we would consent,  
17 Judge.

18 MR. TOUGER: As to Mr. Christopher, we consent.

19 MR. DUNN: Your Honor, I consent on behalf of  
20 Mr. Rodgers.

21 THE COURT: All right. Since this continuance is due  
22 to the government's need to provide voluminous discovery to the  
23 defendants and the defendants' need to review that discovery in  
24 order to determine what motions, if any, to make, I  
25 prospectively exclude the time from today until December 18,

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1 2015 from Speedy Trial Act calculations. I find that this  
2 continuance serves to ensure the effective assistance of  
3 counsel and prevents any miscarriage of justice. Additionally,  
4 I find that the ends of justice served by such a continuance  
5 outweigh the best interests of the public and each of the  
6 defendants in a speedy trial pursuant to 18 U.S.C. Section  
7 3161.

8 So I'm setting this matter down at 2:30 on  
9 December 18th.

10 Are there any other issues that counsel wish to raise?

11 MR. HARTMAN: Judge, I just wanted to clarify the time  
12 for the next conference.

13 THE COURT: 2:30.

14 MR. HARTMAN: 2:30?

15 THE COURT: Yeah. I think I said 2 o'clock earlier  
16 and I misspoke.

17 MR. HARTMAN: Thank you, Judge.

18 MR. TOUGER: Your Honor, I would just like the Court's  
19 permission to order the minutes from Mr. Christopher's  
20 arraignment down in the Magistrate's, the presentation.

21 THE COURT: Your application is granted. Just submit  
22 something, Mr. Touger.

23 All right. Everyone in the courtroom is to remain  
24 seated until the defendants are escorted from the courtroom,  
25 and the marshals may escort them now.



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1 (Pause)

2 (Defendants not present)

3 THE COURT: Have a good afternoon.

4 THE CLERK: All rise.

5 MR. SWERGOLD: Thank you, your Honor.

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